

SALE OF BUSINESS AGREEMENT

SAMPLE

DATED 20.....

BETWEEN

.....
(Vendor)

AND

.....
(Purchaser)

AGREEMENT FOR SALE OF BUSINESS

MACALISTER MAZENGARB SOLICITORS
WELLINGTON
0562C

AGREEMENT FOR SALE OF BUSINESS

1.0 Parties

- 1.1 The parties to this Agreement are:
 (a) ***** (“the Vendor”)
 (b) ***** (“the Purchaser”)

2.0 Introduction

- 2.1 The Vendor agrees to sell and the purchaser agrees to purchase all that part of the business of the Vendor at present carried on by the Vendor on the premises situated at..... including the assets of the Vendor owned and used in connection herewith (but excluding the book debts which shall remain the property of the Vendor) for the sum hereinafter set out

IT IS HEREBY AGREED

3.0 Purchase Price

- 3.1 The Vendor shall sell and the purchasers shall purchase the business and assets described in the Schedule hereto.
- 3.2 The purchase price is ***** allocated as follows:
 (a) For the lease and goodwill
 (b) For the tenant's fixtures and plant improvements and machinery \\
 (c) For the stock on hand
- 3.3 The parties hereto acknowledge that no Goods and Services Tax is payable in respect of this agreement; the sale being treated as a supply of a taxable activity as a going concern pursuant to Section 11(1)(c) of the Goods and Services Tax Act 1985.

NOTWITHSTANDING the parties acknowledgement hereto, in the event of Goods and Services Tax being payable in respect of this agreement for whatever reason the purchase price shall be deemed to be exclusive of Goods and Services Tax and the Purchaser shall pay to the Vendor at the Vendor's request all Goods and Services Tax charged on the sale.

4.0 Stock

- 4.1 Stock shall be valued at current wholesale selling prices less %, less a reduction % for damaged or obsolete items. Such values to be agreed between the parties or failing agreement, determined by an expert to be appointed by both parties within five (5) days of request by either party. The stock taking shall be performed by physical check prior to the date of settlement.
- 4.2 Upon the actual value being determined as hereinbefore provided and the value thereof is in excess of the sum stated in clause 3.2(c) hereof the Purchaser shall pay the Vendor forthwith the amount of such excess. If the value of the stock is less than the sum stated in clause 3.2(c) hereof the amount of the deficiency shall forthwith be refunded by the vendor of the purchaser.

4.3 Upon completion of the stock valuation all stock sheets and calculations to be made available to the purchaser.

5.0 Payment of Purchase Price

5.1 The purchase price shall be paid to the vendor in the following manner:

- (i) Ten percent of the purchase price upon execution of this agreement by both parties;
- (ii) The balance of the purchase price in cash on settlement .

5.2 Penalty interest for late settlement shall be.....

6.0 Settlement

6.1 The date of settlement is the ** day of ** on which date the Vendor will give vacant possession of the business and all usual outgoing (excluding insurance premiums) shall be apportioned.

6.2 The Purchaser acknowledges that the Vendor has made payments in respect of the business *****. The Purchaser agrees that any such payments in respect of the business will be adjusted directly between the parties after the date of settlement.

7.0 Lease

7.1 It is acknowledged by the parties that the Vendor currently occupies the business premises pursuant to an unwritten sublease from ****. The Vendor will surrender its sublease and will cause ****to grant a new sublease of the premises to the Purchaser from the date of settlement to the ****. The rental for the premises shall be calculated on an annual basis at the rate of **** per square foot of floor space occupied by the purchaser. The floor space shall be measured from the inside of the glass front of the exterior walls without deduction for columns or other projections and includes the toilet facilities, stairs, landings and life front areas on floors where such areas are exclusive to the Purchaser. The sublease shall also provide for the Purchaser to pay a proportion of **** outgoings which shall be calculated as the proportion which the Purchaser's floor space shall bear to the total floor area leased by ****. The sublease shall also contain all such other terms and conditions as are contained in ****lease of the whole premises.

8.0 Financial and other Conditions

8.1 This agreement is conditional upon the Purchaser arranging finance in all respects satisfactory to himself within ****days/weeks from the signing of this Agreement

8.2 In relation to every financial condition and any other condition(s) the following shall apply:

- (a) The condition shall be a condition subsequent.
- (b) If the condition is not fulfilled by the date of fulfilment (time being of the essence) either party may at any time before the condition is fulfilled or waived avoid this contract by giving notice in writing to the other and upon avoidance of the contract the Purchaser shall be entitled to the return of the deposit and any other moneys paid by the Purchaser and neither party shall have any right or claim against the other.
- (c) If by agreement between the parties the time for fulfilment of any condition is extended the extended time shall be of the essence.

(d) The Purchaser may at any time before this contract is avoided waive any financial condition or waive any condition inserted for the sole benefit of the Purchaser.

8.3 It is acknowledged by the Purchaser that the **** telephone is owned by the Vendor pursuant to ****. It is a condition of this agreement that the Vendor will arrange for an assignment of the **** to the Purchaser and that the Purchaser will take over the Vendors obligations pursuant to the **** and the Purchaser will fully indemnify the Vendor against any future liability in respect of the ****.

8.4 It is acknowledged by the Purchaser that the provisions of this clause 7 of this agreement shall, where inconsistent with the provisions of any other part of this agreement, take priority over any other provisions.

9.0 Delivery on Settlement

9.1 On the date of settlement the Purchaser shall (in addition to any other matters the purchaser is entitled to) receive:

- (a) Delivery of the fixtures, plant, machinery and tenants improvements referred to in the Schedule hereto and the stock-in-trade.
- (b) A transfer of the telephone now connected to the said premises.
- (c) The subclause referred to in clause 6 hereof.
- (d) A release of any debenture or other charge or encumbrance in respect of the business and assets purchased, other than the agreements in respect
- (e) The conditional purchase agreement in respect of the ***** motor vehicle and an assignment thereof.

10.0 Vendors Obligations

10.1 The Vendor shall pay all debts and liabilities connected with the business and this sale up to the date of settlement.

10.2 The Vendor warrants that there are no local body governmental or other requisitions or requirements outstanding and relating to the business (including the premises and any licences or other assets to be sold to the Purchaser).

10.3 The Vendor warrants that all assets hereby agreed to be sold are its own sole and exclusive property and on delivery of possession will pass to the purchaser free from any charge or encumbrance whatsoever and further the said fixtures plant, and machinery will be in good operational order and condition.

10.4 The Vendor warrants that until possession has been given and taken the Vendor will properly carry on and conserve the business as a going concern and use all reasonable endeavour to preserve the goodwill thereof.

11.0 Assets at Risk of Vendor until Settlement

11.1 All property and assets being sold under this agreement shall be at the Vendor's sole risk in every respect until settlement and if the property or assets or any part thereof is damaged or destroyed before that time and such damage or destruction has not been made good by the Vendor at the time of settlement the Purchasers shall be entitled to elect either:

- (a) To complete the Purchase at the fixed purchase price less a sum equal to the amount of insurance monies recovered or recoverable by the Vendor in respect of such damage or destruction; or
- (b) To rescind this contract by notice in writing handed or posted to the Vendor or the Vendor's solicitors whereupon any monies paid by the Purchasers shall be returned to the Purchasers immediately and this transaction shall be at the end and neither party shall have any claim upon the other.

12.0 Staff

- 12.1 The Vendor shall be liable to meet all remuneration and other allowances for amounts accrued and payable including any redundancy repayments to all employees of the Vendor including those who accept employment with the Purchaser. The parties acknowledge that the Vendor will cease to employ its current employees and contracts of employment will be terminated or otherwise dealt with by the Vendor PROVIDED THAT this clause shall be construed as to include liability to discharge as at settlement date any staff related payments or any associated payments to Inland Revenue Department.
- 12.2 The Purchaser agrees to offer employment to all employees of the Vendor as at the date hereof, currently employed in the business of the Vendor on terms no less favourable than the terms the employees are presently employed under by the Vendor, (Sought by Vendor).

13.0 Restraint

- 13.1 In consideration of the purchase price the Vendor agrees that it will not for a period of 5 years from the date of possession carry on or be engaged or interested either along or in partnership with or as servant or agent of any person in any business similar to that hereby sold within a radius of 20 kilometres from the said premises.

14.0 Use of Name

- 14.1 The vendor agrees to the use by the Purchase of the trade name after the date of settlement.

15.0 Resolution of Disputes

- 15.1 The parties hereto acknowledge that they will use their best endeavours to effect an amicable and expeditious resolution of any disputes arising in respect of this Agreement or any agreements concurrently entered into, but in the event that a decision cannot be effected, the parties agree to submit the matter for resolution to an expert who shall deliver a decision as an expert and in the event that the parties cannot agree on such nomination the matter shall be referred to the President for the time being of the New Zealand Society of Accountants and in the event of his being unwilling to accept the nomination the dispute shall be referred to such persons as the President of the New Zealand Law Society may appoint to determine the matter.

16.0 Interpretation

- 16.1 Clause headings have been included for the sake of convenience and shall not be looked to in the interpretation.
- 16.2 The provisions of this Agreement shall not merge upon settlement.

